

SENATE BILL NO. 5034

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Senator Boysko)

A BILL to amend and reenact § 53.1-202.3 of the Code of Virginia, relating to Department of Corrections;
earned sentence credits.

Be it enacted by the General Assembly of Virginia:**1. That § 53.1-202.3 of the Code of Virginia is amended and reenacted as follows:****§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

A. A maximum of ~~four and one-half~~ 4.5 sentence credits may be earned for each 30 days served
on a sentence for:

1. A Class 1 felony;

2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-
32.2, or 18.2-33;

3. Any violation of § 18.2-40 or 18.2-45;

4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any
person results from providing any material support, or of subsection A of § 18.2-46.6;

5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title
18.2;

6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et
seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of §
18.2-57.2;

7. Any felony violation of § 18.2-60.3;

8. Any felony violation of § 16.1-253.2 or 18.2-60.4;

9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;

10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

11. Any violation of § 18.2-90, 18.2-91, or 18.2-93;

12. Any violation of § 18.2-289 or subsection A of § 18.2-300;

13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;

14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B of § 18.2-371.1;

15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;

16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or

17. A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:

a. Any felony violation of § 3.2-6571;

b. Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or any crime punishable as such;

c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;

d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;

e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;

f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;

g. Any violation of § 18.2-89 or 18.2-92;

h. Any violation of subsection A of § 18.2-374.1:1;

i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or

j. Any violation of subdivision E 2 of § 40.1-29.

The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

B. For any offense other than those enumerated in subsection A for which sentence credits may be earned, earned sentence credits shall be awarded and calculated using the following four-level classification system:

1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions.

2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area.

3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas.

4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1.

C. A person's classification level under subsection B shall be reviewed at least once annually, and the classification level may be adjusted based upon that person's participation in and cooperation with programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. Records from this review, including an explanation of the reasons why a person's classification level was or was not adjusted, shall be maintained in the person's correctional file.

D. A person's classification level under subsection B may be immediately reviewed and adjusted following removal from a program, job assignment, or educational curriculum that was assigned pursuant to § 53.1-32.1 for disciplinary or noncompliance reasons.

E. A person may appeal a reclassification determination under subsection C or D in the manner set forth in the grievance procedure established by the Director pursuant to his powers and duties as set forth in § 53.1-10.

F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

2. That the provisions of this act shall become effective on July 1, 2021.

3. That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, shall apply retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2021. If it is determined that, upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the release date of any such inmate passed prior to the effective date of this act, the inmate shall be released upon approval of an appropriate release plan and within 60 days of such determination; however, no inmate shall have a claim for wrongful incarceration pursuant to § 8.01-195.11 of the Code of Virginia on the basis of such retroactive application. If an inmate is released prior to completion of any reentry programs deemed necessary by the Department of Corrections on the inmate's most recent annual review or prior to completion of any programs mandated by court order, the inmate shall be required to complete such programs under post-release community

106 supervision, provided that release prior to completion of any programs required by the court is not
107 strictly prohibited by the terms of the court order.

108 4. That the Department of Corrections shall ensure that similar programs for earning sentence
109 credits are available at all state correctional facilities.

110 5. That the Department of Corrections shall ensure that similar rehabilitative and reentry programs
111 are available at all probation and parole offices.

112 6. That the Department of Criminal Justice Services shall continue to administer grant funding to
113 private entities for the purpose of assisting in reentry services.

114 7. That the Department of Corrections (the Department) shall determine whether implementation
115 of this act will result in any cost savings to the Department and shall provide a report on such finding
116 to the Virginia State Crime Commission, the Chair of the House Committee on Appropriations, and
117 the Chair of the Senate Committee on Finance and Appropriations by January 1, 2021.

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